VERIFIED STATEMENT

OF

TORSTEN CLAUSEN

TELECOMMUNICATIONS DIVISION

ILLINOIS COMMERCE COMMISSION

DOCKET NO. 01-0338

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Q. Please state your name and business address.

A. My name is Torsten Clausen and my business address is 527 East Capitol Avenue, Springfield, Illinois 62701.

Q. What is your occupation?

A. I am a Policy Analyst in the Telecommunications Division of the Illinois Commerce Commission ("Commission").

Q. Please describe your educational and occupational background.

A. I graduated in 1997 from the University of Giessen, Germany with a Bachelor of Arts in Business and Economics. In May 2000, I was awarded a Master of Science degree in Economics from the University of Wyoming.

The University of Wyoming M.S. in Economics degree program concentrates specifically on the economics of regulation. The graduate courses taken during this program include *Telecommunications: Policy and Regulation*, *Public Utilities Economics*, *Advanced Industrial Organization and Public Policy*, and a seminar in *Regulatory Economics*. My Master's thesis is entitled *Pricing based on Total Element Long Run Incremental Cost: An Economic Evaluation.* It analyzes the economic and other consequences of the FCC's use of the TELRIC costing methodology and explores alternatives.

From May to August of 1999, I was employed as an intern in the Policy Department of the Telecommunications Division with the Commission. In this capacity, I performed research and analysis of local telecommunications

competition and other policy related issues. Among other duties, I examined the effects of current Illinois Commerce Commission rules on arbitrated interconnection agreements, and contributed to a statutory, regulatory and judicial treatise on telecom regulation by providing analysis of the FCC's interconnection order (*Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98). During such internship, I also assisted Telecommunications Division staff in various docketed cases, including Case No. 98-0555, the Ameritech/SBC merger, 98-0860 SBC/Ameritech Service Reclassification and numerous interconnection agreements. I have also participated in several workshops and staff presentations on subjects including separations, OSS, wholesale pricing and interconnection.

Q. Have you previously testified before the Commission?

A. Yes. I have provided expert witness testimony in Dockets 00-0332 (Level 3 vs. Ameritech Arbitration), 00-0233/00-0335 Consolidated (Universal Service Support Fund), 99-0511 (Illinois Code Part 790 rewrite), 00-0393 (Ameritech's Line Sharing tariff), 00-0312/00-0313 (Covad/Rhythms vs. Ameritech Arbitration), 99-0615 (Ameritech's Collocation tariff), and several negotiated interconnection agreements.

Q. What is the purpose of your testimony?

A. My testimony addresses the disputes in issues TDS-25, TDS-28, TDS-33, TDS-41, TDS-91, TDS-107, TDS-189, and TDS-190.

Issue TDS-25

Q. Ameritech Illinois is proposing language for its Interconnection Agreement with TDS Metrocom that provides that "SBC-13 STATE has no obligation under the Act to combine UNEs." Do you endorse Ameritech's proposed language?

A. No. As shown below, the FCC and this Commission have consistently interpreted the 1996 Telecommunications Act ("1996 Act") to require incumbent carriers to combine unbundled network elements ("UNEs").

Q. What is the current status regarding combinations of unbundled network elements?

A. The issue of combination of unbundled network elements currently is being addressed at several levels. At the federal level, the issue is before the U.S. Supreme Court. At the state level, the 92nd Illinois General Assembly recently passed a bill that speaks to the issue of UNE combinations.[1]; In addition to the General Assembly's recent bill, the Commission is currently addressing the issue of UNE combinations in at least two separate dockets. First, it is addressing the issue in the investigation of Ameritech's Unbundled Local Switching with Shared

[1] House Bill 2900, Amendment 4, 92nd General Assembly-2nd Session

Transport ("ULS-ST") tariff offering in Docket No. 00-0700. Second, the Hearing Examiner in Docket No. 98-0396, Ameritech's TELRIC compliance docket, recently issued a proposed order.

Q. Please describe the current status at the federal level.

A. In its First Report and Order on Local Competition ("*First Report and Order*"), the FCC adopted rules to implement § 251(c)(3) of the 1996 Telecommunications Act, which required incumbent carriers to offer competitors unbundled access to network elements.[2] The FCC codified its rules in 47 C.F.R. 51.315, which require the following:

> *(a) An incumbent LEC shall provide unbundled network elements in a manner that allows requesting telecommunications carriers to combine such network elements in order to provide a telecommunications service.*
> *(b) Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.*
> *(c) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network, provided that such combination is:*
> *(1) Technically feasible; and (2) Would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.*
> *(d) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements with elements possessed by the requesting telecommunications carrier in any technically feasible manner.*
> *(e) An incumbent LEC that denies a request to combine elements pursuant to paragraph (c)(1) or paragraph (d) of this section must prove to the state commission that the requested combination is not technically feasible.*
> *(f) An incumbent LEC that denies a request to combine elements pursuant to paragraph (c)(2) of this section must prove to the state commission that the requested combination would impair the ability of other carriers to*

[2] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, rel. August 1996 ("*First Report and Order*").

obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

In 1997, the United States Court of Appeals for the Eighth Circuit ("Eighth Circuit") vacated § 51.315(c)-(f)[3], and later § 51.315(b)[4]. Subsequently, the United States Supreme Court ("Supreme Court") reversed the Eighth Circuit's decision to vacate § 51.315(b)[5]. The Supreme Court stated that it is not "persuaded by the incumbent's insistence that the phrase 'on an unbundled basis' in § 251(c)(3) means 'physically separated'." It further stated that § 251(c)(3) "is ambiguous on whether leased network elements may or must be separated, and the rule the Commission has prescribed is entirely rational, finding its basis in § 251(c)(3)'s nondiscrimination requirement."[6]

Thus, Ameritech's proposal for Appendix UNE, Section 1.1 appears to be inconsistent with federal requirements. TDS is correct when it states that Ameritech is required to provide combinations of UNEs in certain circumstances.[7]

In January 2001, the Supreme Court decided to address the issue of whether the Eighth Circuit was correct when it vacated FCC rule 51.315 (c)-(f), the "additional combinations" rule[8].

Q: What does Section 13-801 of HB 2900, the "telecommunications rewrite bill", provide with respect to UNE combinations?

[3] Opinion, Iowa Utilities Board v. Federal Communications Commission, et al, On Petitions for Review of an Order of the Federal Communications Commission, (filed July 18, 1997).
[4] Order on Petitions for Rehearing, Iowa Utilities Board v. Federal Communications Commission, et al, On Petitions for Review of an Order of the Federal Communications Commission, (filed October 14, 1997), at ¶ 3.
[5] AT&T Corp. v. Iowa Utilities Bd., 525 U.S. (1999).
[6] Id. at 395.
[7] Ameritech Illinois Response To TDS Petition for Arbitration, Issues Matrix at 3.

A: Section 13-801 (d) (3) states:

"upon request, an incumbent local exchange carrier shall combine any sequence of unbundled network elements that it ordinarily combines for itself, including but not limited to, unbundled network elements identified in The Draft of the Proposed Ameritech Illinois 271 Amendment (I2A) found in Schedule SJA-4 attached to Exhibit 3.1 filed by Illinois Bell Telephone Company on or about March 28, 2001 with the Illinois Commerce Commission under Illinois Commerce Commission Docket Number 00-0700. The Commission shall determine those network elements the incumbent local exchange carrier ordinarily combines for itself if there is a dispute between the incumbent local exchange carrier and the requesting telecommunications carrier under this subdivision of this Section of this Act."[9]

As a result, Section 13-801, if signed into law by the Governor, makes it clear that Ameritech Illinois is required to combine UNEs for requesting telecommunications carriers. Therefore, this presents another reason why Ameritech's broad restriction on the combination of UNEs is inappropriate.

Q. The combination of UNEs is also currently discussed in ICC Docket No. 00-0700, the investigation of Ameritech's shared transport offering. Do you agree with Ameritech's proposal to not even consider the issue of UNE combinations in this docket because it is currently addressed in Docket No. 00-0700?

A. No. Ameritech was directed by this Commission as early as 1996 to offer network elements in a combined fashion.[10] In my opinion, there is no reason why the Commission should wait for the outcome of Docket No. 00-0700 in order to prevent Ameritech from implementing its proposed restrictive language in its

[8] 121 S. Ct. 878; 148 L. Ed. 2d 788; January 22, 2001.
[9] House Bill 2900, Amendment 4, 92nd General Assembly-2nd Session.
[10] *AT&T Communications of Illinois, Inc. Petition for a total local exchange wholesale service tariff from Illinois Bell Telephone Company d/b/a Ameritech Illinois and Central Telephone Company pursuant to Section 13-505.5 of the Illinois Public Utilities Act*, Docket No. 95-0458/95-0531consolidated, Order at 2.

Interconnection Agreement with TDS Metrocom. This is especially true because there is ample evidence that Ameritech is required to combine network elements.

Q. Apart from the discussion of UNE combinations in Docket No. 00-0700, the Hearing Examiner in Docket No. 98-0396 (Ameritech's TELRIC Compliance Docket) recently issued a Proposed Order. What does the Hearing Examiner's Proposed Order ("HEPO") provide with respect to UNE combinations?

A. In relevant part, the HEPO states that:

> "In short, there is no reason in law why the Commission should not reject Ameritech Illinois' legal arguments *in toto*. As a variety of courts and state commissions have recognized, neither the IUB line of decisions, nor the FCC's UNE Remand Order, singly or in combination, prevents this Commission from deciding that Ameritech Illinois should be required to provide UNE combinations as requested by the CLECs. This Commission should continue to require Ameritech Illinois to offer, without restriction, UNE combinations and the UNE Platform. Any combination of network elements that Ameritech Illinois ordinarily combines in its network and that permits CLECs to provide a telecommunications service to an end user should be made available by Ameritech Illinois. For example, Ameritech Illinois should be required to provide UNE combinations to allow CLECs to provide service to new customers, or to offer additional lines to existing customers, just as Ameritech Illinois does for its retail customers. The conversion of existing service to UNE-based service of the same functionality (e.g., migrations "as is" to UNE-P) does not and should not entail physical work or separation of facilities or equipment, and the customer's dial tone should be preserved."[11]

[11] *Investigation into the compliance of Illinois Bell Telephone Company with the order in Docket 96-0486/0569 Consolidated regarding the filing of tariffs and the accompanying cost studies for interconnection, unbundled network elements and local transport and termination and regarding end to end bundling issues*, Docket No. 98-0396, at 96.

This further demonstrates that the Commission should not wait for the outcome of Docket No. 00-0700 to reject Ameritech's overly broad statement that "SBC-13 STATE has no obligation under the Act to combine UNEs."

Issues TDS-28, TDS-41 and TDS-190

Q. Please explain why issues TDS-28, TDS-41, and TDS-190 are closely related.

A. All three issues concern Ameritech's obligation to provide access to UNEs when facility modifications are required.

Issue TDS-28 refers to Section 2.9.1 of Appendix UNE, in which Ameritech contends that "*where facilities and equipment are not available, SBC-13STATE shall not be required to provide UNEs. However, CLEC may request and, to the extent required by law, SBC-13STATE may agree to provide UNEs, through the Bona Fide Request (BFR) process."*[12] TDS seeks to include a reference to Ameritech's Facilities Modification and Construction Policy ("FMOD Policy"), which applies to Ameritech's five-state region and which was announced by Ameritech in Accessible Letter CLEC AM00-0153.[13] Furthermore, TDS wishes to reference an earlier Order by the Wisconsin Commission ("Wisconsin Order") that made certain changes and amendments to the FMOD Policy.[14] It appears Ameritech agreed to update its Accessible Letter to reflect such changes.

Issue TDS-41 concerns the appropriate scope of the Bona Fide Request ("BFR") process. In Section 5.2.1 of Appendix UNE, Ameritech defines the BFR

[12] Ameritech Illinois' Response to TDS Petition for Arbitration, Appendix UNE, Section 2.9.1.
[13] Nicholas Jackson Direct at 12.

as follows: "*A Bona Fide Request ("BFR") is the process by which CLEC may request SBC-AMERITECH to provide CLEC access to new, undefined UNE, (a "Request"), that is required to be provided by SBC-AMERITECH under the Act but is not available under this Agreement or defined in a generic appendix at the time of CLEC's request.*"[15]

TDS proposes to amend this language by adding that "*the BFR process will not be used for currently defined UNEs so long as CLEC does not request shorter provisioning intervals. Currently defined UNEs where CLEC does not request shorter provisioning intervals will be handled by the Facilities Modifications process in Accessible Letter CLEC AM00-153, or the modifications to those commitments as reflected in the [Wisconsin Order]*"[16]

Issue TDS-190 deals with a situation similar to issue TDS-28. As in issue TDS-28, the dispute centers around the question of whether a reference to Ameritech's FMOD Policy should be included in the agreement. Ameritech's language in Section 4.6 of Appendix DSL states that the agreement "*neither imposes on SBC-12STATE an obligation to provision xDSL capable loops in any instance where physical facilities do not exist nor relieves SBC-12STATE of any obligation that SBC-12STATE may have outside this Agreement to provision such loops in such instance*."[17] TDS seeks to include that "*where facilities require modifications they will be handled under the facilities modification process in*

[14] Id. at 12.
[15] Ameritech Illinois' Response to TDS Petition for Arbitration, Appendix UNE, Section 5.2.1.
[16] Id.
[17] Ameritech Illinois' Response to TDS Petition for Arbitration, Appendix DSL, Section 4.6.

Accessible Letter CLEC AM00-153, or the modifications to those commitments as reflected in the [Wisconsin Order]"[18]

Q. How did the Wisconsin Panel rule on these issues?

A. The Wisconsin Panel ruled with respect to issue TDS-28 that "the parties appear to agree with respect to the process with which facilities will be modified to accommodate new and additional access to UNEs…" and that the "concern here is large procedural."[19] The Panel further stated that "[i]ncorporating the results of the other proceeding [the Wisconsin Order] into this agreement may create contractual enforcement privileges not intended in the other proceeding. Review of enforcement actions may be handled differently and assigned to different courts for judicial review."[20]

Moreover, the Panel used the same reasoning on issues TDS-41 and TDS-190.

Q. What is your assessment of the decision by the Wisconsin Panel?

A. Since I am not a lawyer, I cannot comment on the legal ramifications associated with including references to results of other proceedings or commitments made outside the agreement. However, with respect to issue TDS-28, I do note that Ameritech Illinois (as opposed to Ameritech Wisconsin) fails to incorporate language in Section 2.9.1.1 of Appendix UNE that references the changes and

[18] Id.
[19] *TDS Metrocom Petition for Arbitration of Interconnection Terms, Conditions, and Prices from Wisconsin Bell, Inc., d/b/a Ameritech Wisconsin*, Public Service Commission of Wisconsin, Docket 05-MA-123 at 35.
[20] Id.

amendments to Ameritech's region wide FMOD Policy. I recommend that such reference be included in the agreement.

Q. What is your recommendation regarding issues TDS-41 and TDS-190?

A. I find Ameritech's definition of the scope of the BFR process precarious. It seems to indicate that in the event the FCC or this Commission defines a new UNE, all orders for the new UNE must go through a BFR process. Such a process would unduly impede entry into telecommunications markets and should be rejected. If Ameritech is required to provide a UNE under the Act, it should not be allowed to require a BFR for each and every order of such UNE. As Staff indicated in its direct testimony during the *Special Construction* proceeding, "the BFR process has important anti-competitive effects. It requires a CLEC to come up with a $2,000 deposit or agree to promptly pay the total preliminary evaluation costs incurred and invoiced by Ameritech. These costs may be a barrier to entry. The BFR process can also lead to delays in provisioning service. Ameritech may take up to 90 day just to quote a price for special construction."[21]

I recommend that Ameritech's language concerning issue TDS-41 be deleted.

As stated above, I cannot address the legal consequences of including references to documents outside the agreement. Nevertheless, I do note that TDS' position appears to be consistent throughout issues TDS-28 and TDS-190. Therefore, if the Commission agrees with TDS on issue TDS-28, I recommend including TDS' additional language in Section 4.6 of Appendix DSL, which is the

center of TDS-190. I agree with TDS witness Jackson, who states that "there is no reason for DSL loops to be treated any differently than other loops for this purpose."[22]

Q. Has this Commission previously addressed Ameritech's obligations concerning UNEs in situations where facilities modifications are required?

A. Yes. In docket No. 99-0593, the Commission investigated Ameritech's application of its tariff governing special construction charges, pursuant to Section 9-250 of the Illinois Public Utilities Act ("PUA").

Q. Do you see a potential conflict between Ameritech's proposed language concerning issue TDS-28 and the Commission's findings in Docket 99-0593?

A. Yes. My first concern is directed at Section 2.9.1 of Appendix UNE, where Ameritech states that "*where facilities and equipment are not available, SBC-13STATE shall not be required to provide UNEs.*" The decisive term in this sentence is "available". The Order in Docket No. 99-0593 ("*Special Construction Order*") discusses at great length the importance of Ameritech's interpretation of "available". The Commission recognized that "the definition of 'available' is crucial to the determination of when Ameritech is obligated to provide a CLEC access to particular UNE facilities. If particular facilities are determined not to be 'available', ILECs have no duty to provide CLECs access to such facilities. As a

[21] Docket No. 99-0593, Staff Exhibit 1.00 (Graves Direct) at 12.
[22] Nicholas Jackson Direct at 27.

general proposition, it may be said that the narrower the definition, the fewer opportunities CLECs will have to compete. Accordingly, Ameritech has an incentive to narrowly define 'available' so as to impair CLECs ability to compete."[23] Before the *Special Construction Order* directed Ameritech to include the definition of "available" in its special construction tariff, Ameritech only provided its definition of "available" on TCNet[24] . During that proceeding Staff witness Chris Graves testified that Ameritech's definition of "facility availability" had changed five times since December 1999.[25] Therefore, the Commission concluded that the definition of "available" should not be left to Ameritech's unilateral revisions. The *Special Construction Order* directed Ameritech to include the following definition of "available" in its special construction tariff:

"*A facility is considered available if the facility requested is located in an area presently (i.e., at the time at which a facility is requested) served by Ameritech Illinois.*"[26]

My concern is that Ameritech might argue that the above ordered definition does not apply here, and hence make TDS Metrocom subject to unnecessary costs and delays by requiring TDS to order facilities modifications through a BFR. Subsequently, as long as both parties agree that the Commission's definition of "available" applies to situations described in Section 2.9.1 of Appendix UNE, I do not see good reasons for rejecting Ameritech's proposed language.

[23] Docket No. 99-0593, Final Order ("*Special Construction Order*") at 18.
[24] TCNet is a password-accessible web site created and maintained by Ameritech for the purposes of communicating general Ameritech policies on a variety of issues to CLECs.
[25] *Special Construction Order* at 14.

This recommendation is consistent with the Commission's intent in the *Special Construction Order*. The Order states that "Interconnection agreements that rely solely on Ameritech's tariff to determine when special construction charges apply, however, can not be said to be inconsistent with the Commission's conclusions in these matters. Notably, in situations where an interconnection agreement references "available" network elements yet does not define "available", the Commission's definition shall apply."[27]

My second concern is found in the fourth sentence of Section 2.9.1 of Appendix UNE. It states that "…*CLEC may request and, to the extent required by law, SBC-13STATE may agree to provide UNEs, through the Bona Fide Request (BFR) process."* I find it contradictory to state that Ameritech may agree to something that it is required to do by law. I propose to replace the word "may" with "shall". The language in an interconnection agreement should not be permissive with regard to compliance with laws or Commissions' orders.

Issues TDS-33 through issues TDS-40

Q. What is your understanding of issues TDS-33 through TDS-40, which involves the notion of "Adjacent Location"?

A. It appears that the underlying point of contention is the pricing structure and pricing level that applies to the situation in question. From a technical standpoint, there seems to be little or no difference whether such an arrangement is referred to as "adjacent collocation" or "interconnection".

[26] Ill. C. C. No. 20, Part 19, Section 1, 1st Revised Sheet No. 4.4.
[27] *Special Construction Order* at 25.

Ameritech is of the opinion that there is no such thing as "off-site collocation", since all FCC orders explicitly refer to collocation on the ILECs premises. TDS contends that it is entitled to an arrangement that exists in California and which the California Commission termed as "adjacent location". Adjacent location refers to an arrangement where a CLEC places its equipment on premises other than the ILEC's and connects to the ILEC's central office via a 600-pair copper cable.

Q. Are you prepared to give a recommendation concerning issues TDS-33 through TDS-40 at this time?

A. No, not at this time. I am interested in acquiring additional information during the evidentiary hearing before addressing the issues in greater detail during the briefing cycle.

Issue TDS-91

Q. TDS Metrocom states that the FCC ordered a 90-day collocation interval. Do you agree?

A. No. In its *Collocation Waiver Order*, the FCC granted waivers of several ILECs to comply with its previously ordered 90-day default collocation provisioning interval.[28] Specifically, the FCC established interim collocation provisioning intervals, "pending Commission action on the petitions for reconsideration of the *Collocation Reconsideration Order*."[29] SBC and Verizon were granted an interim

[28] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket N0. 98-147, Memorandum Opinion and Order, rel. November 7, 2000 ("*Collocation Waiver* Or*der*").
[29] *Collocation Waiver Order* at ¶ 12.

default interval consistent with provisioning interval standards set for Verizon by the New York Public Service Commission ("New York Commission").

Q. What standard interval did this Commission specify in Ameritech's Collocation tariff proceeding?

A. Subsequent to the *Collocation Waiver Order*, this Commission adopted the interim intervals of the FCC as Ameritech Illinois' collocation provisioning interval standard.[30] Ameritech Illinois' tariffed standard collocation provisioning interval equals 104 calendar days of receipt of a collocation order.

Of course, mutually agreed upon provisioning intervals that are shorter than the tariffed interval, should be encouraged by this Commission. I do disagree, however, with TDS witness Lawson who states that the FCC mandated standard interval is 90 days, and that it does not allow for any exceptions.[31]

Q. Is Ameritech's proposal to provision collocation space within 180 days (if power has not yet been provided in the collocation area) reasonable?

A. Yes, in limited circumstances where either a major power expansion or a new power plant is needed. Such language would be consistent with the *Collocation Waiver Order*, which granted Qwest a 180 day provisioning interval "for arrangements requiring the installation of a power plant…"[32]

For situations not involving either a major power expansion or construction of a new power plant, an interval of 180 days appears excessive. For example,

[30] ICC Docket No. 99-0615 on rehearing, Order at 6.
[31] Cliff Lawson Direct at 22.

Ameritech's collocation tariff provides that its standard provisioning interval may be extended up to 28 calendar days in situations where conditioned space is not readily available.[33] Ameritech's tariff defines "conditioned space" as space that has sufficient structural components such as […] electrical systems (AC power), DC power, power distribution via frames or bays…"[34]

I recommend that the language in Section 10.3 of Appendix Collocation be amended to clarify that only situations involving either a major power expansion or installation of a new power plant trigger a 180 day provisioning interval.

Issue TDS-107

Q. TDS Metrocom argues that reciprocal compensation payments apply to calls made by Ameritech Illinois customers to customers of TDS who obtain "foreign exchange" ("FX") service from TDS (or vice versa). Do you agree?

A. In its decision in Docket No. 00-0332 (Level 3 vs. Ameritech Illinois arbitration), the Commission concluded that "FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation."[35]

Second, it is somewhat surprising to see that TDS is arguing in issue TDS-219 that it objects to the inclusion of the FX and Feature Group A ("FGA") appendices in the interconnection agreement because it currently is not offering

[32] *Collocation Waiver Order* at ¶ 18.
[33] Ill. C. C. No. 20, Part 23, 1st Revised Sheet No. 31.2.
[34] Id.
[35] Arbitration decision in ICC Docket No. 00-0332 (August 30, 2000) at 9.

any FX service or using any FA service. Yet, in issue TDS-107, TDS is contending that Ameritech should pay TDS reciprocal compensation when TDS terminates calls to TDS customers with FX service. This appears to be inconsistent.

Therefore, given the above reasons, I agree with Ameritech and recommend that its proposed language be adopted by the Commission.

Issue TDS-189

Q. Please provide your understanding of issue TDS-189, which involves line splitting.

A. The point at issue concerns Ameritech's obligations in situations when two different CLECs provide voice and data services over a single loop, commonly referred to as line splitting. In Appendix DSL, section 4.5, Ameritech's proposed language states that "*any line sharing between two CLECs shall be accomplished between those parties and shall not utilize any SBC-12STATE splitters, equipment, cross connects or OSS systems to facilitate line sharing between such CLECs*." Ameritech witness Silver appears to be of the opinion that TDS is seeking language that would expand Ameritech's obligations in line splitting situations. Mr. Silver emphasizes his understanding that Ameritech is not required "to provide splitters, cross connects and other equipment" when two CLECs use a single copper wire to provide voice and data services.[36]

[36] Michael Silver Direct at 16.

TDS witness Lawson counters that "TDS Metrocom is not proposing that Ameritech be required to provide splitters, equipment or cross-connects" in such instances. Instead, TDS objects to Ameritech's proposed language because its inclusion of OSS systems is overly restrictive. TDS argues that such a broad restriction on the use of OSS systems could be construed by Ameritech to completely prevent line splitting. TDS explains that one of the participating CLECs will in fact have to utilize SBC's OSS systems for provisioning the actual loop.[37] TDS proposes to add one clarifying sentence to Section 4.5 of Appendix DSL, which reads as follows:

"*Unless otherwise ordered by the Commission, SBC-13STATE will not be required to modify its OSS systems to facilitate line sharing, however, SBC-13STATE may not otherwise restrict a CLEC's use of OSS systems merely because the CLEC is line sharing with another CLEC*."

Q. What is your recommendation regarding issue TDS-189?

A. While I agree with Ameritech witness Silver that Ameritech is not required to provide a splitter in line splitting situations, I strongly disagree with other key aspects of his testimony on this issue.

I do not share his opinion that TDS' proposal "would require Ameritech to purchase and install the splitter and to perform the physical work necessary to combine the splitter with the unbundled loop and unbundled switching." Moreover, he states that under the Eighth Circuit's decisions "Ameritech cannot be required to provide new combinations of network elements", [since] "TDS' line

[37] Cliff Lawson Rebuttal at 3.

splitting proposal would improperly require Ameritech to separate currently combined UNEs and recombine those UNEs with other facilities that are not UNEs (an Ameritech-owned splitter)." His understanding of TDS' position is clearly incorrect. However, even under his interpretation of TDS' position, Mr. Silver's arguments should be rejected. For the reasons set forth above in the discussion of issue TDS-25, this Commission has the authority to require combinations of UNEs in certain circumstances, despite the Eighth Circuit's decisions. However, as stated earlier, this is not the point at issue.

TDS is neither proposing that Ameritech be required to provide the splitter, nor is TDS proposing that Ameritech be required to provide new combinations of UNEs. Instead, TDS is seeking to enforce its existing rights under current rules. TDS' proposed language is actually rather modest.

As the FCC makes clear in its *Line Sharing Reconsideration Order*, ILECS "have a current obligation to provide competing carriers with the ability to engage in line splitting arrangements."[38] Paragraphs 20 and 21 of the FCC's *Line Sharing Reconsideration Order* explicitly spell out the parties' responsibilities in a line splitting arrangement, stating that:

> "Incumbent LECs are required to make all necessary network modifications to facilitate line splitting, including providing nondiscriminatory access to OSS necessary for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements. Thus, an incumbent LEC must perform central office work necessary to deliver unbundled loops and switching to a

[38] Deployment of Wireline Services Offering Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, released January 19, 2001 ("*Line Sharing Reconsideration Order*") at ¶ 18.

competing carrier's physically or virtually collocated splitter that is part of a line splitting arrangement."[39]

The *Line Sharing Reconsideration Order* further states "incumbent LECs must allow competitors to order line splitting immediately, whether or not a fully electronic interface is in place."[40] Ameritech's positions in this negotiation process appear to be inconsistent with the FCC's intent with respect to line splitting. The FCC urged ILECs and CLECs "to work together to develop processes and systems to support competing carrier ordering and provisioning of unbundled loops and switching necessary for line splitting. In particular, we encourage incumbent LECs and competing carriers to use existing state collaboratives and change management processes to address, among other issues: developing a single-order process for competing carriers to add xDSL service to UNE-platform voice customers; allowing competing carriers to forego loop qualification if they choose to do so (i.e., because xDSL service is already provided on the line); enabling competing carriers to order loops for use in line splitting as "non-designed" service; and using the same number of cross connections, and the same length of tie pairs for line splitting and line sharing arrangements."[41]

In light of these directions from the FCC, at a minimum, the Commission should grant TDS' proposed additional language in Section 4.5 of Appendix DSL. Considering the FCC's *Line Sharing Reconsideration Order.* I recommend changing Ameritech's proposed language to the following:

[39] *Line Sharing Reconsideration Order* at ¶ 20.
[40] Id. at footnote 36.
[41] Id. at ¶ 21.

"*any line splitting between two CLECs shall not utilize any SBC-12STATE splitters to facilitate line splitting between such CLECs*."

As a final matter, I recommend that the language in Section 4.5 of Appendix DSL be modified. The FCC and this Commission consistently refer to situations involving the provision of voice and data services over a single loop, where the incumbent carrier is not the provider of the voice service, as line splitting, rather than line sharing. In its *Line Sharing Reconsideration Order*, the FCC expresses that such a situation "is not technically line sharing, because both the voice and data service would be provided by competing carrier(s) over a single loop. To avoid confusion, in the Texas 271 Order, we characterized this type of arrangement as 'line splitting', rather than line sharing."[42]

I therefore recommend replacing the term "line sharing" with the term "line splitting" in Section 4.5 of Appendix DSL.

Q. Does this conclude your testimony?

A. Yes.

[42] Id. at ¶ 17.